Filed 4/9/19 Meng v. Rowland Heights Mobile Estates CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

KEN MENG et al., Plaintiff and Appellant, v. ROWLAND HEIGHTS MOBILE ESTATES et al., Defendants and Respondents.	B284815 c/w B287620 (Los Angeles County Super. Ct. No. KC069291)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dan Thomas Oki, Judge. Affirmed.

Ken Meng, in pro. per., for Plaintiff and Appellant.

Diane Cheung, in pro. per., for Plaintiff and Appellant.

Becherer Kannett & Schweitzer, Emily Diane Bergstrom for Defendant and Respondent.

INTRODUCTION

Plaintiffs Ken Meng and Diane Cheung live in a mobile home park owned by defendant Rowland Heights Mobile Estates, (RHME) and managed by defendant Olisan, Inc. Plaintiffs sued defendants for retaliatory eviction and causes of action under California's Mobilehome Residency Law. (Civ. Code, § 798, et seq.) Plaintiffs alleged that defendants violated their rights by filing an unlawful detainer case and taking other actions that allegedly interfered with plaintiffs' rights to meet with and communicate with other tenants of the mobile home park. The trial court sustained defendants' demurrers, holding that the cause of action based on the unlawful detainer action was barred by issue preclusion, and the other claims failed to state valid causes of action. We agree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs' complaint

On May 5, 2017, plaintiffs filed a complaint against defendants alleging retaliatory eviction and violations of Civil Code section 798.51.[1] Section 798.51 is part of California's Mobilehome Residency Law (MRL), which "extensively regulates the landlord-tenant relationship between mobilehome park owners and residents." (*Greening v. Johnson* (1997) 53 Cal.App.4th 1223, 1226.)

Plaintiffs alleged that the Rowland Heights Mobile Estates (the park) is a 327-space mobile home park, and Olisan manages the property. Cheung purchased a mobile home in July 2012, and entered into a lease agreement for a parcel of land in the

[1]All further statutory references are to the Civil Code unless otherwise indicated.

park. Meng is Cheung's husband, and lives with her in the mobile home.

Plaintiffs' allegations focused on three different subject areas: the concrete supports for the mobile home's awning supports and a related unlawful detainer action; use of the park clubhouse; and use of the "mail tubes located under the mailboxes of each space."

1. *Concrete supports and unlawful detainer action*

Plaintiffs alleged that on July 30, 2012, plaintiffs received a notice requesting that they remove concrete plaintiffs had poured on their leased parcel, and to move the awning supports they had adjusted. Cheung responded in writing requesting "proof that the notice from Defendant RHME was not given in bad faith or in any other way to oppress Plaintiffs." Plaintiffs alleged that defendants did not respond to this letter until February 2013.

In February, March, and April 2013, defendants served plaintiffs with several notices to remedy violations of park rules. Plaintiffs alleged that they responded to these notices "with letters noting that actions taken by Defendant RHME are done in bad faith" or were otherwise oppressive.

On May 3, 2013, RHME served plaintiffs with a 60-day notice to terminate possession, which "incorporated most points laid out in the previous 7-day notices." On July 15, 2013, RHME filed an unlawful detainer (UD) complaint against Cheung. On December 6, 2013, the UD court apparently ordered Cheung to adjust her awning supports, and in January 2014, Cheung obtained permits and completed the adjustments. RHME sent a letter to plaintiffs stating that the requirements imposed by the UD court had not been adequately fulfilled. RHME moved to amend the UD judgment, and on March 7, 2014, the court

ordered Cheung to "remove the existing concrete blocks and replace it with poured concrete" within 60 days. In January 2015, RHME was awarded attorney fees relating to the UD action.

The complaint alleges that on May 6, 2015, plaintiffs received a minute order from the UD court "for court costs and attorney's fee[s]" of $3115.86. The minute order "noted that 'There was evidence of retaliation against [Plaintiff] and other Asian tenants of the mobilehome park." (Brackets in complaint.) The minute order is not attached to the complaint.

2. *The clubhouse*

Plaintiffs alleged that on February 2, 2013, plaintiffs planned a community event at the park clubhouse to organize "MRA 1441," a residents' association. Plaintiffs alleged that the clubhouse had a sign on it that day stating that it was "closed for cleaning," but no cleaning crew was there. The event was held near the pool instead, and an assistant manager who went to the event told residents that plaintiffs had not reserved the clubhouse for the meeting. The complaint further alleged that on February 23, 2013, "Plaintiff Ken Meng hosted an event at the clubhouse establishing the MRA1441."

In early April 2013, Meng began working with MRA1441 to plan a park-wide protest scheduled for May 4, 2013. The 60-day notice to quit was served the day before the protest. Meng organized a press conference and potluck to be held in the clubhouse on June 8, 2013, but RHME sent a notice to residents that the clubhouse would be closed from June 7 to June 11. Meng rescheduled the press conference and potluck to June 15, but then RHME sent a notice stating that the clubhouse would be closed until June 25. Meng rescheduled the potluck to June 29,

2013, but on that day the clubhouse still was closed. Residents gathered outside, and the manager came to the meeting and took pictures, and "disrupted the meeting two more times with different excuses."

Before an MRA1441 event at the clubhouse on May 5, 2015, a park manager came to the clubhouse, asked everyone to leave, and threatened to call the sheriff. Two sheriff's patrol cars "appeared [in] the parking lot but did not enter the clubhouse."

3. *Mail tubes*

In December 2013, plaintiffs met with defendants to discuss multiple issues, including plaintiffs' "request[ ] to use mail tubes located under the mailboxes of each space to circulate information. Defendant RHME previously rejected any such proposition and continues to reject Plaintiff's request to use the mail tubes even as Plaintiff showed a willingness to work with management on when the MRA1441 will, or will not, circulate information."[2]

In May 2015, plaintiffs "sent letters to other residents in RHME notifying them of an event . . . utilizing Defendant RHME's mail tubes." Management removed the letters and disposed of them. The complaint alleged that Meng "tried to reason with Defendant RHME's management, but who instead refused and called the Los Angeles County Sheriff's Department. Sheriff assisted defendant." On May 4, 2015, RHME "sent a letter to Plaintiff Ken Meng and other leaders in the MRA1441 rejecting Plaintiff's use of the mail tubes."

---

[2]The complaint includes many references to "plaintiff" in the singular, without specifying which plaintiff by name.

4. *Causes of action*

The scope of plaintiffs' causes of action was the source of some confusion. On the caption page of the complaint, plaintiffs listed five causes of action: (1) retaliatory eviction, (2) violation of section 798.51 relating to homeowner communication, (3) violation of section 798.51 relating to use of the clubhouse, (4) preliminary and permanent injunction, and (5) declaratory relief. However, in the body of the complaint, only the following three causes of action were asserted.

In the first cause of action for retaliatory eviction, plaintiffs alleged that "defendants' acts and omissions constitute retaliatory eviction in violation of California Civil Code § 1942.5."[3] Plaintiffs alleged they were damaged financially and physically because they had to fight these charges in court. They further alleged that defendants' actions were reckless and willful, and requested punitive damages.

In their second cause of action for violation of section 798.51 relating to "right of homeowners to communicate," plaintiffs asserted that defendants denied plaintiffs' "right to distribute and circulate information in a reasonable manner pursuant to 798.51(a)(3), by removing and destroying information

---

[3] Section 1942.5 limits the ability of a "lessor" to retaliate against a "lessee." Subdivision (d) states, "it is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law."

distributed by plaintiff via a mailing tube that is set under the USPS mailing box."[4]

Plaintiffs' third cause of action was for "preliminary and permanent injunction." Plaintiffs asserted that RHME "wrongfully and unlawfully demanded Plaintiff to not use the mailing tubes which were installed by the park, to communicate with other residents of the park." They alleged that this denied "Plaintiffs' fundamental First Amendment right to communicate, which is also guaranteed in California Civil Code section 798.50."[5] The complaint further alleges that Cheung "injured her ankle while delivering letters to residents' door[s] instead of using the mail tubes." Plaintiffs requested an injunction stating that they could use the mail tubes.

Plaintiffs prayed for damages in the amount of $2,000,000.00, punitive damages, a declaratory judgment and injunction allowing plaintiffs to use the mail tubes, and costs of suit.

---

[4] Section 798.51, subdivision (a)(3) states, "No provision contained in any mobilehome park rental agreement, rule, or regulation shall deny or prohibit the right of any homeowner or resident in the park to do any of the following: . . . Canvass and petition homeowners and residents for noncommercial purposes relating to mobilehome living, election to public office, or the initiative, referendum, or recall processes, at reasonable hours and in a reasonable manner, including the distribution or circulation of information."

[5] Section 798.50 states in full, "It is the intent of the Legislature in enacting this article to ensure that homeowners and residents of mobilehome parks have the right to peacefully assemble and freely communicate with one another and with others with respect to mobilehome living or for social or educational purposes."

B. Demurrer

RHME and Olisan separately demurred to the complaint. They asserted that the first cause of action was barred by res judicata following the judgment in the unlawful detainer (UD) action relating to the awning supports and 60-day notice to quit. Defendants filed a request for judicial notice of the unlawful detainer complaint, plaintiffs' answer to the unlawful detainer complaint, two rulings from that case, and the judgment from that case. In the UD complaint, RHME alleged that Cheung "improperly relocated the awning supports" on her tract, and "altered the awning supports without obtaining the requisite prior approval" from RHME or the Department of Housing and Community Development. The UD complaint alleged that Cheung had received several notices about the violations, and that termination was warranted due to Cheung's failure to comply with any of the notices.

In Cheung's answer to the UD complaint, she asserted as an affirmative defense that RHME filed the UD complaint in retaliation because "because [Cheung] helped organize and/or participates in a residents[']' association and exercised her rights peacefully and lawfully under the law." In denying a motion for summary judgment, the UD court stated, "There are only two triable issues of material fact": first, "whether in serving a 60-day notice of termination of [Cheung's] tenancy, [RHME] wrongfully retaliated against [Cheung] in the manner prohibited by Civil Code section 1942.5(c)," and second, whether RHME had acted in good faith. However, the court also made findings in RHME's favor: "The court finds that [Cheung] improperly relocated the awning supports located at the premises but, in returning them to their original location, altered them without obtaining the

requisite prior approval from [RHME] and/or the requisite permits from the Department of Housing and Community Development and the rules and regulations of [RHME]. In addition, the court also finds that [Cheung] failed to comply with the park rules and regulations pertaining to concrete installations, storage of items outside the mobilehome/shed, parking on landscaping and excessive occupants."

Following a bench trial in the UD action, the court entered judgment for RHME in January 2014, and stated, "Judgment for [RHME], execution is stayed for 60 days on the condition that parties cooperate with each other and make applications to the Department of Housing and Community Development for a permit for concrete work and support for awnings." RHME submitted a written judgment for the court to sign, stating in part, "[The Court finds that, in serving the 60 Day Notice of Termination of [Cheung's] tenancy, [RHME] did not wrongfully retaliate against [Cheung] in violation of Civil Code §1942.5(c)." Before it signed the judgment, the court crossed out this language and other sections purporting to reflect findings made by the court. The remainder of the written UD judgment awarded RHME holdover rental damages, holdover utilities, costs, and attorney fees. Possession of the premises was stayed for 60 days to allow Cheung to obtain permits and abate the code violations.

In their demurrers, defendants asserted that the UD judgment barred plaintiffs' first cause of action for retaliatory eviction under the doctrine of res judicata and collateral estoppel. Defendants noted that the UD court ruled in RHME's favor, thus finding that there was no retaliatory eviction.

As to the second cause of action, defendants asserted that plaintiffs failed to state facts sufficient to constitute a cause of

action. (Code Civ. Proc., § 430.10, subd. (e).) Defendants noted that section 798.51 bars certain restrictions in a "mobilehome park rental agreement, rule, or regulation." (§ 798.51, subd. (a).) Defendants argued that plaintiffs had not identified any rule or regulation in their rental agreement, or any other rule or regulation, that interfered with their ability to assemble or distribute information. Olisan noted that plaintiffs had not alleged that Olisan violated plaintiffs' rights.

Regarding the third cause of action, defendants noted that on the face of the complaint the third cause of action related to use of the clubhouse, but the body of the complaint did not include such a cause of action. Defendants asserted that plaintiffs failed to state facts sufficient to constitute a cause of action because "Plaintiffs fail to allege any right to use the clubhouse, whether pursuant to statute or otherwise." Defendants also asserted that plaintiffs failed to show any rule or regulation that interfered with their use of the clubhouse.

As to the fifth cause of action for declaratory relief, defendants noted that again, this cause of action was listed on the cover of the complaint but was not included in the body of the complaint. Defendants noted that the complaint mentioned declaratory relief only in the prayer, and did not allege facts supporting such a cause of action.

Plaintiffs' opposition to the demurrers is not included in the record on appeal. RHME's reply stated that plaintiffs' opposition "consists entirely of a proposed order and a request for judicial notice." Plaintiffs' request for judicial notice includes a May 6, 2015 minute order from the UD court on RHME's motion for attorney fees in that action. The court granted RHME's motion for attorney fees. The court stated that it had considered many

factors, including that RHME "began this unlawful detainer action with very lengthy, aggressive and complicated demands upon an Asian family with limited English. The court found against plaintiff on all of the factual issues except for two items of improvements [Cheung] made to [her] mobile home parking area without the necessary permits. Those permits have been obtained. There was also evidence of retaliation against defendant and other Asian tenants of the mobile home park." The court further found that RHME "could have obtained compliance with the building code violations in a less expensive way, such as cooperating with the tenants rather than by way of aggressive, lengthy (a kitchen sink of complaints) and complicated demands, proceeding with injunctive relief rather than eviction and otherwise acting as a responsible landlord." The court noted that the case had been appealed and the "appellate division found that [RHME] was entitled to an award" of attorney fees. The court found that a significant portion of the requested attorney fees were unnecessary, and awarded fees in the amount of $2,260.00, "an amount consistent with other contested unlawful detainer proceeding[s]."

Defendants' replies asserted that the demurrers should be sustained because plaintiffs failed to oppose them. The replies also re-asserted defendants' substantive arguments, and argued that the court should deny any request for leave to amend the complaint.

C. Ruling on demurrers

The court issued a tentative ruling sustaining the demurrers. The court granted defendants' and plaintiffs' requests for judicial notice. The court stated that the first cause of action for retaliatory eviction was barred by res judicata and

collateral estoppel because that issue had been determined in the UD action. The court therefore stated that the demurrers to the first cause of action would be sustained without leave to amend.

The court sustained the demurrers to the second cause of action relating to the right of homeowners to communicate within the park, noting that plaintiffs "have not asserted that there is any provision contained in their mobilehome park rental agreement, rule, or regulation that denied them the right to peacefully assemble or meet in the park, or their right to distribute or circulate that information." Citing plaintiffs' opposition, the court noted that plaintiffs "do not oppose [defendants'] demurrer to this cause of action, but request leave to amend same."

The court sustained the demurrers to the third cause of action relating to use of the clubhouse, noting that although there were facts in the complaint relating to the clubhouse, there was no cause of action discussing the clubhouse. The court again noted that plaintiffs did not oppose the demurrer, but requested leave to amend.

Regarding the fifth cause of action for declaratory relief, the court noted that it was listed on the caption page of the complaint, but the body of the complaint did not allege facts to support declaratory relief. Again the court noted that plaintiffs did not oppose the demurrer, but requested leave to amend.

As to Olisan, the court stated, "Olisan is alleged to have been the property manager at all relevant times; accordingly, it would be in privity with [RHME], the property owner." The court sustained both defendants' demurrers, denied leave to amend the first cause of action, and stated, "[t]he court will hear from

plaintiffs as to their request for leave to amend as to the second, third, and fifth causes of action and will require an offer of proof."

There is no transcript of the demurrer hearing in the record on appeal. An order sustaining the demurrers, originally submitted as a proposed order by defendants, stated that the court "sustained Defendants' Demurrers in their entirety . . . based upon the tentative ruling . . . and upon oral argument at the hearing. After sustaining the demurrers in their entirety without leave to amend, the court dismissed this action in its entirety, without prejudice." The order stated that at the hearing, plaintiffs "were provided an opportunity to provide an offer of proof as to an amendment" of the second, third, and fifth causes of action, but "did not provide any offer of proof at the hearing[,] and thus, the court granted [*sic*] the demurrer without leave to amend."

The court entered judgment in favor of defendants and awarded defendants costs and attorney fees on July 19, 2017. Plaintiffs timely appealed.

D. Defendants' motion for attorney fees

On September 8, 2017, defendants filed a motion seeking $20,731.25 in attorney fees. Defendants asserted that attorney fees were warranted because the case arose out of the MRL. "In any action arising out of the provisions of [the MRL,] the prevailing party shall be entitled to reasonable attorney's fees and costs." (§ 798.85.)

Defendants submitted declarations from two different attorneys, one who initially began handling the case, and one working with the defendants' insurer. Defense counsel that initially began working on the case stated that she reviewed the complaint, and worked with insurance counsel to get them up to

speed on the background of the case and plaintiffs' allegations. The attorney stated that her firm incurred fees in the amount of $10,619.25, which did not include the time spent in preparing the motion for attorney fees. She included copies of bills reflecting the work done and charges.

Defendants' insurance counsel also submitted a declaration, stating that her firm incurred fees in "reviewing and analyzing plaintiffs' complaint, performing legal research, drafting demurrer papers for both defendants," drafting reply briefs, and appearing at the hearing. Insurance counsel included bills reflecting the work done on the case. The bills reflect attorney fees for June 2017 amounting to $6,933.00, and July and August 2017 amounting to $2,354.00. The bills include total amounts for attorney time charges, which apparently include amounts from redacted portions of the bill. The bills also include costs for service and filing documents related to the case.

No opposition or reply is included in the record on appeal. A tentative ruling stated that no timely opposition was filed. The tentative ruling found that plaintiffs' causes of action arose out of the MRL, which provides for an award of attorney fees to the prevailing party. Because judgment was entered in favor of defendants, they were prevailing parties entitled to attorney fees under section 798.85. The court awarded $19,336.25 in attorney fees based on the bills included with the attorney declarations. The tentative ruling noted that costs of $1,411.00 had already been entered, and therefore no additional costs would be awarded.

A December 6, 2017 minute order stated that defendants submitted on the tentative ruling and the court adopted the tentative ruling as its order. The court entered a written order

awarding defendants $19,336.25 in attorney fees. Plaintiffs timely appealed this order. We granted plaintiffs' motion to consolidate the appeals.

DISCUSSION

A. Scope of the appeal

As an initial matter, defendants assert that we lack jurisdiction because plaintiffs' appeal was dismissed. The appellate background in this case, which involved multiple defaults, dismissals, and reinstatements, is somewhat confusing. However, a close review of the case reveals that only Cheung's appeal from the demurrer was dismissed.

Meng and Cheung filed two separate notices of appeal on August 23, 2017 relating to the judgment following the demurrer. The appeal was dismissed and reinstated twice. After a default notice was sent to Cheung for failing to pay fees in the superior court, this court dismissed the appeal as to Cheung on February 8, 2018. Although the dismissal order does not include any names or indicate that the appeal was partially dismissed, the default notice related to Cheung only, and the remittitur noted that it pertained to Cheung's August 23, 2017 notice of appeal. Thus, the dismissal for the default related to Cheung only, and Meng's appeal from the demurrer was not dismissed.

Plaintiffs' notice of appeal as to the attorney fee order was filed on January 8, 2018. On July 25, 2018, after Cheung's initial appeal was dismissed, this court consolidated the two appeals. We therefore reject defendants' assertion that the appeals have been dismissed in their entirety. We consider Meng's appeal

from the demurrer and both plaintiffs' appeal from the attorney fee order.[6]

B. Demurrer

Meng asserts that the trial court erred by sustaining the demurrer. "We review an order sustaining a demurrer de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law." (*Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1190.) We give the complaint a reasonable interpretation, and treat the demurrer as admitting all material facts properly pleaded. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) "[I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory." (*Ibid.*)

1. *First cause of action for retaliatory eviction*

Regarding the first cause of action for retaliatory eviction, Meng asserts that the demurrer should have been overruled because "[r]etaliatory eviction did exist, the judge from the previous case said it in a minute order." The trial court was correct in finding that plaintiffs' claim was barred because this issue was already decided in the UD action.

"Issue preclusion prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.)[7] "[I]ssue preclusion applies: (1) after final

---

[6]Defendants also assert that plaintiffs' failure to provide a reporter's transcript on appeal warrants "summary affirmance" of the appeal. We disagree that the record on appeal is so inadequate as to preclude consideration of the issues presented.

[7]Our Supreme Court has shifted away from the traditional phrases "res judicata" and "collateral estoppel" in favor of the more precise terms "claim preclusion" and "issue preclusion."

adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*Id*. at p. 825.) A demurrer may be sustained on the basis of issue preclusion "[i]f all of the facts necessary to show that the action is barred are within the complaint or subject to judicial notice." (*Carroll v. Puritan Leasing Co*. (1978) 77 Cal.App.3d 481, 485.)

"Tenants' protection from retaliation by their landlords for exercising their rights under California law developed simultaneously from legislation, section 1942.5, subdivision (a) (Stats. 1970, ch. 1280, p. 2314), and the decision by the California Supreme Court in *Schweiger v. Superior Court* (1970) 3 Cal.3d 507, 513, [90 Cal.Rptr. 729, 476 P.2d 97] (*Schweiger*), as an affirmative defense to an eviction action." (*Banuelos v. LA Investment, LLC* (2013) 219 Cal.App.4th 323, 329.) Thus, in an unlawful detainer action, a tenant may assert an affirmative "defense that the eviction is sought in retaliation for the exercise of statutory rights by the tenant. If a tenant factually establishes the retaliatory motive of his landlord in instituting a rent increase and/or eviction action, such proof should bar eviction." (*Schweiger, supra,* 3 Cal.3d at p. 517; see also *Coyne v. De Leo* (2018) 26 Cal.App.5th 801, 805 ["Retaliatory eviction, codified at Civil Code section 1942.5, is [an affirmative] defense" in an unlawful detainer action.].)

Meng asserts that the "final judgment from the 2013 trial court explicitly shows that the issue of retaliatory eviction was not actually litigated nor decided, therefore claim preclusion does

---

(See *DKN Holdings LLC v. Faerber, supra,* 61 Cal.4th at p. 824.) We follow that practice here.

not apply." We disagree. In the UD action, Cheung asserted retaliatory eviction as an affirmative defense. The UD court denied a motion for summary judgment because it found that there was a triable issue as to whether the notice to quit was retaliatory. After trial the UD court found in RHME's favor, indicating that the court had rejected Cheung's retaliatory eviction defense. In the UD court's ruling on RHME's motion for attorney fees, the court stated that it considered the issue of retaliation, noting that there was "evidence of retaliation" against Cheung and other Asian residents of the park. Thus, the court considered the issue, but found insufficient evidence to establish the affirmative defense of retaliatory eviction. The appropriate avenue to challenge that holding would have been an appeal of that judgment, which was entered in January 2014. It cannot be raised in a new civil action filed more than three years later, in May 2017. Plaintiffs are precluded from relitigating retaliatory eviction in a second lawsuit.

Meng asserts on appeal that "[d]amages for the retaliatory eviction did not arise out of the 60-day notice, but out of the motion for attorneys' fees in the previous court." This argument does not support a finding that the demurrer should have been overruled. First, the first cause of action in the complaint was for "retaliatory eviction," not the improper imposition of attorney fees. We cannot assume on appeal that plaintiffs meant something other than what they alleged in the complaint. (See, e.g., *Davidson v. Seterus, Inc.* (2018) 21 Cal.App.5th 283, 307 ["[I]n addressing a demurrer, we assume that the allegations in the complaint are true."].) Second, the issue of attorney fees was also clearly decided in the UD action, and therefore issue preclusion also bars relitigation of that question in a separate

action. The demurrers to the first cause of action were properly sustained.

2. *Second cause of action for violation of section 798.51*

In his opening brief, Meng contends that the demurrer to the second cause of action should have been overruled because defendants prohibited plaintiffs "from freely communicating in the park by disrupting a residents' meeting at the common facilities of the clubhouse and closing the clubhouse when [plaintiffs] expressed a plan to use it." Meng also asserts that defendants' interference with plaintiffs' use of the mail tubes "unreasonably deprives [plaintiffs] of the right to [t]he distribution and circulation of information." Meng asserts that these are violations of section 798.51, subdivision (a)(3).

Section 798.51, subdivision (a)(3), states, "No provision contained in any mobilehome park rental agreement, rule, or regulation shall deny or prohibit the right of any homeowner or resident in the park to do any of the following: . . . Canvass and petition homeowners and residents for noncommercial purposes relating to mobilehome living, election to public office, or the initiative, referendum, or recall processes, at reasonable hours and in a reasonable manner, including the distribution or circulation of information." On appeal, Meng also points to subdivision (a)(1) of the same statute, which states that no "mobilehome park rental agreement, rule, or regulation shall deny or prohibit the right of any homeowner or resident in the park to . . . [p]eacefully assemble or meet in the park, at reasonable hours and in a reasonable manner, for any lawful purpose. Meetings may be held in the park community or recreation hall or clubhouse when the facility is not otherwise in

use, and, with the consent of the homeowner, in any mobilehome within the park." (§ 798.51, subd. (a)(1).)

The trial court sustained the demurrer because plaintiffs failed to identify any "rental agreement, rule, or regulation" that interfered with residents' right to meet or communicate. On appeal, Meng does not address the basis for the court's ruling. He does not assert that there was a provision in the lease agreement, park rules, or any other document that unreasonably restricted use of the clubhouse or mail tubes.

Plaintiffs' allegations that the clubhouse was closed for cleaning in February 2013 and closed for several weeks over the summer of 2013 do not support a cause of action under section 798.51, subdivision (a)(1) or (a)(3). At most, plaintiffs have asserted that the closures were inconvenient. Plaintiffs have not alleged that the closures violated any park rule, regulation, or lease agreement. Similarly, with respect to the mail tubes, plaintiffs did not allege that use of the mail tubes was addressed in any park rule, regulation, or lease agreement. Because plaintiffs' allegations do not include such facts, they did not allege a violation of section 798.51. The demurrer was appropriately sustained.

3. *Declaratory relief*

Meng contends that plaintiffs were entitled to injunctive and declaratory relief "to declare that [plaintiffs] can use the mail tubes to communicate within the park" and to enjoin defendants "from destroying materials that we circulate within" the park. To state a cause of action for declaratory relief, a party must allege two essential elements: "'(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the plaintiff's rights or obligations.'" (*Wilson & Wilson*

v. City Council of Redwood City (2011) 191 Cal.App.4th 1559, 1582.) An injunction "is an equitable remedy for certain torts or wrongful acts of a defendant where a damage remedy is inadequate. A permanent injunction is a determination on the merits that a plaintiff has prevailed on a cause of action for tort or other wrongful act against a defendant and that equitable relief is appropriate." (*Benasra v. Mitchell Silberberg & Knupp* (2002) 96 Cal.App.4th 96, 110.)

Here, plaintiffs did not allege facts raising a justiciable question relating to plaintiffs' right to use the mail tubes, nor did they show that equitable relief was warranted. There is no allegation in the complaint, for example, that the mail tubes were intended to be available for all residents to use, as opposed to a system installed for the exclusive use of park management. As defendants point out, plaintiffs have essentially asserted that they have a "right to use all of the mobile home park facilities for whatever purpose they want," without any facts supporting this contention. Without facts showing there is an actual controversy relating to plaintiffs' rights or that equitable relief is warranted, plaintiffs have failed to state facts sufficient to allege a cause of action for declaratory relief or that they are entitled to injunctive relief.

4. *Leave to amend*

"When a court sustains a demurrer without leave to amend, the plaintiff has the burden of proving how an amendment would cure the defect. [Citation.] If the plaintiff does not demonstrate on appeal 'how he can amend his complaint, and how that amendment will change the legal effect of his pleading,' we must presume the plaintiff has stated his allegations 'as strongly and as favorably as all the facts known to him would permit.'" (*The*

Inland Oversight Committee v. City of San Bernardino (2018) 27 Cal.App.5th 771, 779.) "[I]t is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Aubry v. Tri-City Hospital Dist., supra*, 2 Cal.4th at p. 967.)

Here, the court stated in its tentative ruling that with the exception of the first cause of action for retaliatory eviction, it would allow plaintiffs to make an offer of proof with respect to their ability to amend their complaint. We have no record of the hearing. Meng asserts that the trial court did not provide a fair proceeding because their son was not allowed to sit with them at counsel table, which "did not give us an opportunity to properly analyze the situation of the courtroom while the hearing was active because of our limited English." Meng also asserts that plaintiffs were not provided with sufficient time to make their case. However, the order sustaining the demurrers states that at the hearing, plaintiffs "were provided an opportunity to provide an offer of proof as to an amendment" of the second, third, and fifth causes of action." Thus Meng's contention on appeal is not supported by the record.

"'Perhaps the most fundamental rule of appellate law is that the judgment challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error.'" (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383.) "The general rule is that on a silent record the "'trial court is presumed to have been aware of and followed the applicable law'" when exercising its discretion." (*Biscaro v. Stern* (2010) 181 Cal.App.4th 702, 708.) Plaintiffs have not shown that the trial

court's denial of leave to amend the complaint amounted to an abuse of discretion.

In plaintiffs' opening brief, Meng asserts that several causes of action could be amended in that "[a]n amendment can be made to renumber the section headers to properly match the complaint caption, or vice versa, to properly state" the causes of action for a violation of section 798.51. He also states that plaintiffs can "list[ ] the aforementioned actions [relating to the clubhouse] as actions by respondents' policy." However, Meng does not provide any information about such a policy, or state any facts supporting a finding that the policy violated section 798.51. A fleeting reference to a policy is not sufficient to establish that the complaint may be amended to state a viable cause of action. Moreover, in plaintiffs' reply brief Meng contradicts his own argument, and asserts that "'an offer of proof' would not have been necessary since all facts available to constitute a claim under all four causes of action could be deduced [from the] face of the complaint." Meng therefore has not established on appeal that leave to amend the complaint is warranted. The judgment on the demurrer is affirmed.

C. Attorney fees

The trial court awarded attorney fees under section 798.85, which states that on causes of action arising out of the MRL, "the prevailing party shall be entitled to reasonable attorney's fees." The same section states that a party is "prevailing" when "the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial." (§ 798.85.) We review an attorney fee award for abuse of discretion, "which will be found only where no reasonable basis

for the court's action is shown." (*Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 233.)

Plaintiffs' sole argument on appeal is that because the demurrer ruling should be reversed, defendants would no longer be prevailing parties, and therefore the attorney fee award should also be reversed. Because we affirm the judgment following the demurrer, defendants meet the definition of "prevailing party" in section 798.85. The attorney fee award is therefore affirmed.

DISPOSITION

The judgment and attorney fee order are affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.